IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4649 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

D S SAWANT

Versus

DIRECTOR

Appearance:

1. Special Civil Application No. 4649 of 1986

MR RR VAKIL for Petitioner No. 1

MS REETA CHANDARANA, ASSTT.GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 11/10/2004

ORAL JUDGEMENT

In this petition the petitioner has prayed for appropriate writ, order or direction directing respondents to carry out the pay fixation pursuant to the decision of this High Court in Special Civil Application

No.1761 of 1978, and pay arrears as per the directions of this Court vide order dated 26.2.1981. The case of the petitioner and about which there is no serious dispute is that the petitioner was not being given the benefit of certain period of service rendered by him in the cadre of Junior Clerk. The petitioner had therefore filed Special Civil Application No. 1761 of 1978 before this Court and learned Single Judge of this High Court by judgement dated 26.2.1981, was pleased to allow the petition and it was directed that the respondents should examine the case of the petitioner's seniority and assign him seniority in accordance with law as if he was regularly recruited in July, 1960 when he was factually recruited, and the respondents were further directed to give to the petitioner all consequential benefits that would flow from refixation of his seniority as if his seniority was fixed according to law at the time he was so required to be fixed.

2. It is not in dispute that the Letters Patent Appeal No. 131 of 1981 filed by the respondents failed and therefore, by order dated 20th August, 1981, the respondents taking into account seniority of the petitioner in the cadre of Junior Clerk from 1.7.1960, assigned him seniority above one Shri A.J. Shah and also found that the petitioner was required to be promoted to the cadre of Senior Clerk with deemed date of promotion of 1.6.1966. It was however, provided in the said order that the petitioner will not be entitled for any arrears for the period between 1.6.1966 to the actual date of taking over charge as Senior Clerk.

3. Along with the affidavit-in-reply, the respondents have also produced the order dated 17th September, 1982, in which detailed calculation of the difference in salary accruing to the petitioner has been worked out. It is however, not in dispute that the petitioner has not been paid arrears in salary to the post of Senior Clerk, though he was given deemed date of promotion from 1.6.1966. It is against this action of the respondents that the petitioner has filed the present petition praying for reliefs as outlined above.

4. As noted above, in the earlier petition filed by the petitioner, learned Single Judge of this High Court had specifically provided that the petitioner shall be given the benefit of seniority in the cadre of Junior Clerk as if he was regularly recruited in year 1960, and it was also directed to give to the petitioner all consequential benefits that would flow from refixation of his seniority. As noted above, the Letters Patent Appeal

against this order came to be dismissed. The respondents having found the petitioner fit for promotion also granted promotion with deemed date of promotion with effect from 1.6.1966.

5. Having granted the promotion from an earlier date, it was not possible for the respondents to with-hold the full benefits thereof including that of arrears of salary, since the learned Single Judge in the earlier round of litigation has specifically directed that the petitioner will be given all consequential benefits flowing from refixation of seniority. Upon refixation of seniority, if petitioner is found fit for promotion and actually granted promotion from such deemed date, it was not open for the respondents to withhold the arrears of salary flowing from such an order of retrospective promotion.

6. Reliance placed by the learned AGP on the Circular of the Government dated 30.3.1970 would not change the situation. Firstly, the relevant portion of the circular, as found in paragraph 1 of the said Circular, pertains to the cases in which a Government servant is superseded for promotion, but is eventually found fit for promotion by the higher authorities. In such a case, it is provided that though the Government servant be given promotion from the due date, his case for arrears of salary would not be acceptable. In the present case however, the petitioner was granted his due seniority by Court's order, which also included direction for grant of all consequential benefits flowing from such refixation of seniority.

7. In the decision of State of Andhra Pradesh Vs. K.V. Narasimha Rao, reported in AIR 1999 SC 2255, it was observed by the Hon'ble Supreme Court that in normal circumstances when the retrospective promotions are effected, all benefits flowing there from, including monetary benefits must be extended to an officer who has been denied promotion earlier.

8. In the decision reported in AIR 1991 SC 2010 (Union of India Vs. K.V. Jankiraman) while considering the question of following of sealed cover procedure for promotion in case of a Government servant who is under cloud, the Hon'ble Supreme Court observed that when in some of the cases the sealed cover was directed to be opened and promotions granted, the contention on behalf of the Government that even if the Government servant is found fit for promotion he would not be entitled to arrears of salary on the principle of no work, no pay,

cannot be accepted. The Hon'ble Supreme Court further observed that when an employee is completely exonerated in criminal/disciplinary proceedings and is not visited with the penalty even of censure indicating thereby that he was not blame-worthy in the least, he should not be deprived of any benefits including the salary of the promotional post. The normal rule of "no work no pay" is not applicable to such cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. In view of the above decisions of the apex Court and particularly in view of the directions of the learned Single Judge of this Court in the earlier petition filed by the petitioner for granting of consequential benefits, I find that the action of the respondents in depriving the petitioner of the arrears of salary, is illegal and unlawful.

9. In the result, the petition is allowed. The respondents are directed to grant to the petitioner arrears of salary for the post of Senior Clerk from 1.6.1966, till actual date of promotion i.e. 20th August, 1981 and pay the same within a period of six weeks from the date of receipt of a copy of this order. If the respondents fail to pay the said amount within the stipulated period, the entire amount shall carry simple interest at the rate of 8% per annum from the date of this order till actual payment thereof.

With the result, the petition is allowed. Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)

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